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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SIROUS P.A. GHASEMIAN et al.,

Plaintiffs and Respondents,

v.

LAGUNA DANA INVESTMENTS, LLC,

Defendant and Appellant.

G050863

(Super. Ct. No. 30-2011-00473087)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed. The motions to dismiss the appeal are denied.

Hayes, Scott, Bonino, Ellingson & McLay, Mark G. Bonino and Gabrielle A. Hollingsworth for Defendant and Appellant.

Law Offices of Jeffrey S. Benice and Jeffrey S. Benice for Plaintiffs and Respondents.

This case involves a dispute between a commercial property owner, Laguna Dana Investments, LLC (Laguna Dana), and its tenants Sirous & Sons Rug Gallery, Inc. (Sirous & Sons) and Sirous P.A. Ghasemian (collectively Tenants). Tenants sued Laguna Dana after a 2010 rain storm caused flooding and damage at their rug store. The matter proceeded to contractual arbitration, and the arbitrator ruled in favor of Tenants. On cross-motions to confirm and vacate the arbitration awards, the trial court ruled in favor of Tenants and confirmed the awards. Laguna Dana appeals, arguing the awards must be vacated because Tenants did not have standing, Ghasemian was not properly represented after her death, the arbitrator failed to compel material testimony, and the awards failed to identify the prevailing parties. We find the trial court's conclusions were proper and affirm the judgment.

FACTS

In December 2010, unusually heavy rains pelted Southern California in general and Laguna Beach in particular. The rain caused severe flooding in downtown Laguna Beach. One of the local businesses damaged by the rain was Sirous & Sons, a family-owned store that sold and repaired Persian rugs on Ocean Avenue (the Premises).

Sirous P.A. Ghasemian, the matriarch of the family, was the chief executive officer and sole shareholder of Sirous & Sons until her death in 2013.¹ She was previously the chief executive officer and sole shareholder of Del Mar Rug Gallery, Inc. (Del Mar) from 2002 until it was suspended as a corporation in 2008.²

In 2007, Del Mar and Ghasemian entered into a commercial lease (Lease) for real property with owner Laguna Dana to operate the Premises. The Lease required

¹ After Ghasemian's death, Sam Maralan, Ghasemian's grandson, became chief executive officer of Sirous & Sons.

² Sirous & Sons was incorporated after the Laguna Dana lease was signed but before Del Mar was suspended as a corporation. Sirous & Sons was the only entity that operated the premises at the commencement of the lease in 2008.

Laguna Dana to maintain the roof and contained a contractual arbitration agreement that contained a clause stating: “By Initialing In The Space Below You Are Giving Up Your Judicial Rights To Discovery And Appeal” (Capitalization in original omitted.)

Sirous & Sons was not a party to the Lease.

Due to damage caused by the heavy rains and flooding, Tenants sued Laguna Dana in 2011 for 12 causes of action, including breach of lease and various tort causes of action relating to inventory damage. Tenants allege Laguna Dana breached the Lease by failing to repair the roof of the Premises and that Laguna Dana failed to warn Tenants the Premises was located in a flood zone. The parties entered into a stipulation submitting all the alleged claims to arbitration and staying trial court proceedings.

In late 2013, the parties submitted their dispute to binding arbitration. The stipulation to arbitrate and stay the court proceeding stated: “Plaintiffs and Defendant entered into a commercial lease agreement which provides [for arbitration of Lease disputes]” Plaintiffs are defined in the caption of the stipulation as “Sirous P.A. Ghasemian, and Sirous & Sons Rug Gallery, Inc.” and the stipulation is signed by an attorney for Ghasemian and Sirous & Sons. The arbitration proceedings were not transcribed by a court reporter.

Maralan, Ghasemian’s grandson, was the Sirous & Sons representative at the arbitration. Maralan also acted as Ghasemian’s representative at the arbitration, and filed a declaration pursuant to Code of Civil Procedure section 377.32.³ Tenants filed a motion in limine to appoint Maralan as Ghasemian’s successor in interest before the arbitrator. Laguna Dana did not lodge objections to the declaration before either the trial court or the arbitrator.

However, Laguna Dana raised the issue of standing of Sirous & Sons and Maralan on multiple occasions before the arbitrator and the trial court, asserting Tenants

³ All statutory references are to the Code of Civil Procedure, unless otherwise indicated.

had no standing to arbitrate because Laguna Dana entered into the Lease with Del Mar and Ghasemian and not Sirous & Sons and Maralan.

The parties had civil discovery rights under the Lease terms. Days before the arbitration began, Laguna Dana unsuccessfully sought to subpoena Saeid Maralan,⁴ son of Ghasemian and father to Maralan, who was an employee of Sirous & Sons at the time of the flood. The record contains no evidence, other than a self-serving declaration from Laguna Dana's counsel, demonstrating Laguna Dana made a motion to compel Saeid's testimony or appearance at the arbitration. The record is also void of any offer of proof as to what Saeid's testimony would have been, other than the declaration of counsel for Laguna Dana.

In his awards, the arbitrator found Sirous & Sons had standing to sue Laguna Dana under the Lease, based upon the parties' stipulation to arbitrate. The arbitrator determined Laguna Dana breached its duty under the Lease for failing to properly maintain and repair the roof of the Premises, after being put on notice of roof leaks in October 2010, before the December 2010 rain and flood. The arbitrator also found Laguna Dana likely knew the Premises were located in an identified flood zone and Laguna Dana had a duty to warn Sirous & Sons of the potential for flooding. The arbitrator awarded "claimant" \$1,677,919 in damages. The arbitrator also awarded "plaintiff" \$356,738 in attorney fees and costs. The captions of the arbitration awards name Maralan as a party to the arbitration in lieu of Ghasemian.

Laguna Dana moved to vacate the arbitrator's award. Laguna Dana challenged Tenants' standing, the arbitrator's refusal to compel Saeid's testimony, and the arbitrator's admission of Maralan's testimony. Tenants filed a motion to confirm the award on the merits, and Laguna Dana opposed the motion on the same grounds set forth in its motion to vacate. Laguna Dana also moved to vacate the arbitrator's attorney fee

⁴ We refer to Saeid Maralan by his first name for clarity and ease of reference, and intend no disrespect.

award in favor of Tenants on the grounds of standing and that the award did not properly identify the prevailing party.

The trial court denied Laguna Dana's motions to vacate the arbitration awards and granted Tenants' motions to confirm the arbitration awards. The court adopted its tentative ruling, finding Sirous & Sons and Maralan the proper parties to the dispute, noting Maralan was president of Sirous & Sons and submitted a section 377.32 declaration as Ghasemian's successor in interest. The court entered judgment confirming the awards, and this appeal followed.

DISCUSSION

"The scope of judicial review of arbitration awards is extremely narrow because of the strong public policy in favor of arbitration and according finality to arbitration awards. [Citations.] An arbitrator's decision generally is not reviewable for errors of fact or law. [Citations.] However, . . . section 1286.2 provides limited exceptions to this general rule, including an exception where '[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.' [Citations.] '[W]hether the arbitrator exceeded his or her powers . . . , and thus whether the award should have been vacated on that basis, is reviewed on appeal de novo.' [Citation.]" (*Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 33.) An arbitrator may exceed his or her powers by, among other things, ruling on an issue the parties have not agreed to arbitrate. (*City of Richmond v. Service Employees Internat. Union, Local 1021* (2010) 189 Cal.App.4th 663, 669-670.) In reviewing a contractual arbitration award, we cannot review the merits of the controversy, the arbitrator's reasoning, or the sufficiency of the evidence supporting the award. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11 (*Moncharsh*).) Even "an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review." (*Id.* at p. 33.) Sections 1286.2 and 1286.6 provide the only grounds for challenging an arbitration award. (*Ibid.*)

“To the extent that the trial court’s ruling rests upon a determination of disputed factual issues, we apply the substantial evidence test to those issues.” [Citation.]” (*Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1217.) “In reviewing a judgment confirming an arbitration award, we must accept the trial court’s findings of fact if substantial evidence supports them, and we must draw every reasonable inference to support the award.” (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 24.)

Laguna Dana raises four main arguments in support of its appeal: (1) the court failed to determine the parties to the arbitration and the arbitrator exceeded his powers in doing so; (2) the arbitrator exceeded his powers by determining Ghasemian’s successor in interest; (3) the arbitrator failed to hear material evidence; and (4) the arbitration awards fail to determine specifically which of the parties prevailed. Each of Laguna Dana’s arguments fail. They are discussed in turn below.

Trial Court Properly Determined Sirous & Sons and Ghasemian Had Standing as Parties to the Arbitration

Laguna Dana claims the arbitrator exceed his powers in determining Tenants were parties to the arbitration because standing was an exclusive issue for the trial court. Laguna Dana’s argument ignores the fact that the trial court did indeed determine the proper parties to the arbitration. The court, on the basis of the parties’ stipulation to arbitrate and stay the court proceeding, ordered the action stayed “so that the parties may proceed with binding arbitration of the [c]omplaint pursuant to [p]aragraph 34B of the [Lease].” The stipulation identified Tenants as parties to the Lease and plaintiffs in the action. It also stated Laguna Dana agreed to arbitrate with Tenants.

Laguna Dana’s claim on appeal that this stipulation does not affect standing has no merit. Since the stipulation set the identity of each of the parties to the arbitration and the Lease, the trial court’s order, in turn, determined both. Laguna Dana specifically

agreed to arbitrate the Lease dispute with Tenants. The trial court, during the hearing on Laguna Dana's motion to vacate the arbitration awards, made it clear the stipulation did away with Laguna Dana's standing argument. Laguna Dana cannot now, after judgment has been rendered against it, be heard to complain of Tenants' standing in the matter.

Arbitrator Properly Determined Submitted Issue of Ghasemian's Successor in Interest

Laguna Dana asserts the trial court erred in confirming the arbitration awards in favor of Ghasemian because the arbitrator exceeded his authority to enter judgment in Ghasemian's favor as she was deceased and unrepresented. Tenants contend jurisdiction was proper because the parties submitted the issue of Ghasemian's successor in interest to the arbitrator, thereby expanding the scope of arbitrable issues, and the arbitrator determined Maralan became Ghasemian's successor in interest after her death. The court properly confirmed the arbitrator's awards because the arbitrator did not exceed his authority by substituting Maralan as Ghasemian's successor in interest.

"[A] cause of action for or against a person is not lost by reason of the person's death, but survives." (§ 377.20.) Substitution of a representative for the decedent addresses a purported lack of jurisdiction. (*Lovret v. Seyfarth* (1972) 22 Cal.App.3d 841, 859 [substitution pending confirmation of award].) Absent a personal representative, the decedent's successor in interest is not only entitled, but has an absolute right, to be substituted for the deceased party. (§ 377.31; *Pepper v. Superior Court* (1977) 76 Cal.App.3d 252, 260-261.) While a decedent's personal representative must generally be made a party for judgment to be rendered for or against a decedent, the courts look to whether the failure to substitute creates prejudice to any party. (*Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 958-959.) An arbitrator's powers "derive from, and are limited by, the agreement to arbitrate. [Citation.]" However, parties may agree to submit to the arbitrator issues they were not contractually compelled

to submit to arbitration, thereby expanding the arbitrator's powers. (*Kelly Sutherlin McLeod Architecture, Inc. v. Schneickert* (2011) 194 Cal.App.4th 519, 528.)

In such a situation, courts look both to the contract and to the scope of the submissions to determine the arbitrator's authority. (*Ibid.*) The arbitrator's view of the scope of his powers and issues submitted for arbitration receives the same judicial deference as the arbitrator's determination on the merits. (*Ibid.*)

Laguna Dana argues the determination of whether Maralan could act as a representative for the deceased Ghasemian was an issue that fell outside the scope of the arbitrator's contractually determined authority. This is not so. Her cause of action did not vanish with her death. The determination of Ghasemian's representative was merely procedural. (§ 377.31.) In addition to the arbitrator's contractual authority to decide a procedural issue, the decision was also submitted to the arbitrator by both sides at the arbitration, thereby expanding his powers. Tenants filed a motion in limine to appoint Maralan as Ghasemian's successor in interest before the arbitrator, which Laguna Dana opposed but did not argue the determination was outside of the arbitrator's powers. It is apparent from the face of the arbitration awards the arbitrator granted Tenants' motion in limine to appoint Maralan as Ghasemian's successor in interest. Indeed, the arbitrator made a substitution of parties in his awards, removing Ghasemian from the caption and replacing her with successor in interest, Maralan. The trial court's recognition of Maralan's section 377.32 declaration also supports this determination.

Nothing in the record precludes the finding that Maralan was Ghasemian's rightful successor in interest. Each side raised the issue of Maralan's standing before the arbitrator and effectively submitted the matter to arbitration. (*Porter v. Golden Eagle Ins. Co.* (1996) 43 Cal.App.4th 1282, 1290-1291.) The arbitrator did not exceed his powers in deciding the issue. The trial court properly granted the motion to confirm because the arbitrator's determination that Maralan was Ghasemian's representative in the arbitration did not exceed his authority.

Trial Court Properly Determined Arbitrator Did Not Fail to Compel and Hear Material Evidence

To vacate an arbitration award based upon an arbitrator's refusal to hear evidence, the reviewing court must determine that a petitioning party's rights were substantially prejudiced, meaning the arbitrator "might well have made a different award had the evidence been allowed." (*Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 439.) It must then consider whether the evidence was material. (*Ibid.*) Laguna Dana claims its rights were substantially prejudiced because the arbitrator failed to compel material testimony from Saeid regarding roof leaks, Tenants' response to the flood, and damages. Laguna Dana asserts that such testimony would have been "conclusive" and "material." In denying Laguna Dana's motion to vacate the arbitration awards, the trial court considered the fact Laguna Dana was responsible to subpoena Saeid's testimony, ultimately finding substantial evidence supported the arbitrator's decision.

Laguna Dana had civil discovery rights under the Lease terms, but failed to exercise them. In fact, Laguna Dana only attempted to serve a subpoena to Saeid days before the arbitration began. The record contains no evidence, other than a self-serving declaration from Laguna Dana's counsel, demonstrating Laguna Dana made a motion to compel Saeid's testimony or appearance at the arbitration.

Even assuming Laguna Dana had properly requested the arbitrator to subpoena Saeid, it made no offer of proof as to the expected content of his testimony. The record is limited as to what evidence, exactly, was not allowed. We have only a declaration from Laguna Dana's counsel. Even if this declaration created a sufficient record of the content of the missing testimony, we must accept the arbitrator's theory and consider whether the arbitrator might have made a different award had the evidence been allowed. The arbitration awards detailed the arbitrator's consideration of all issues submitted and demonstrated the arbitrator gave Laguna Dana a chance to fairly present its

case. There is no assertion Laguna Dana was precluded from offering testimony on a given subject. To the contrary, the awards showed Laguna Dana did indeed present testimony on all aspects of its case, notwithstanding the fact Saeid did not testify. Laguna Dana failed to show how the arbitrator might have reached a different decision and failed to demonstrate the trial court’s judgment was not supported by substantial evidence.⁵

Trial Court Properly Determined Arbitration Awards Named Prevailing Parties

An arbitration award may only be vacated where a party is substantially prejudiced by the arbitrator’s failure to determine all necessary and submitted questions. (§§ 1283.4, 1286.2, subd. (a)(5).) Laguna Dana contends the arbitration awards should be vacated because they fail to specifically determine which of the parties prevailed at arbitration, prejudicing Laguna Dana because it is prevented from carrying out the terms of the awards. Laguna Dana is wrong.

The arbitrator’s award on the merits states “claimant” is the prevailing party. The award of fees and costs lists “plaintiff” as the prevailing party. Laguna Dana cites *M. B. Zaninovich, Inc. v. Teamster Farmworker Local Union 946* (1978) 86 Cal.App.3d 410, 415 (*Zaninovich*), for the proposition a judgment creditor’s identity is required for a certain and decisive award. *Zaninovich*, however, vacated the arbitration award not because the parties were uncertain, but because the arbitrator did not properly determine the amount of the award. (*Ibid.*) Here, the arbitrator’s reference to a singular “claimant” or “plaintiff” as the prevailing party is not fatal to the awards. Laguna Dana argues it is unable to determine the prevailing party but ignores the fact that the damages arise out of the same injury—the flooding of the Sirous & Sons store in December 2010.

⁵ Laguna Dana also complains of the evidence in support of the rug valuation testimony. Laguna Dana does not raise a legal issue or argument in support of this narrative, but in any event a “court may not review the sufficiency of the evidence supporting an arbitrator’s award. [Citations.]” (*Moncharsh, supra*, 3 Cal.4th at p. 11.)

Because courts preclude double recovery based upon damages from the same incident, a plaintiff is entitled “to a single recovery of full compensatory damages for a single injury. [Citation].” (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 754.) Furthermore, “[a]n obligation in favor of several persons is extinguished by performance rendered to any of them.” (Civ. Code, § 1475.)

Laguna Dana is unable to demonstrate substantial prejudice under section 1286.2, subdivision (a)(5), because it is only obligated to pay the judgment amount listed in the arbitrator’s awards. Once Laguna Dana pays the total judgment as to either tenant, its obligation is extinguished. The trial court’s determination was proper.

In addition to briefing on the merits, Tenants filed two motions to dismiss the appeal and requested sanctions arguing Laguna Dana’s appeal is frivolous. Although we conclude the appeal is unmeritorious, we cannot conclude the “appeal has been prosecuted for an improper motive[.]” (*Olsen v. Harbison* (2005) 134 Cal.App.4th 278, 288.) We also find the arbitration agreement did not waive Laguna Dana’s section 1294, subdivision (d), right to appeal any judgment entered on an arbitration award because the broad language⁶ does not waive the right to appeal from a judgment. (*Pratt v. Gursej, Schneider & Co.* (2000) 80 Cal.App.4th 1105, 1108-1110.) We deny Tenants’ motions to dismiss the appeal and requests for sanctions.

DISPOSITION

The judgment is affirmed. The motions to dismiss the appeal are denied. Tenants’ request for judicial notice of a state bar opinion is denied as irrelevant. Tenants’ request for judicial notice of three trial court reporter transcripts in the underlying proceedings is denied because the proper procedure to add material to the record on appeal that was previously presented to the trial court is a motion to augment the record.

⁶ “By Initialing In The Space Below You Are Giving Up Your Judicial Rights To Discovery And Appeal” (Capitalization in original omitted.)

Both of Laguna Dana's requests for judicial notice are granted. Tenants are awarded their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.